

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK
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6 UNITED STATES OF AMERICA) 15CR142
7 vs.)
8 EDGAR DEKAY, II, Buffalo, New York
9 Defendant.) February 27, 2019
- - - - - X 2:30 p.m.

9 **SENTENCING**

10 TRANSCRIPT OF PROCEEDINGS
11 BEFORE THE HONORABLE ELIZABETH A. WOLFORD
12 UNITED STATES DISTRICT JUDGE

13 JAMES P. KENNEDY, JR., ESQ.
14 United States Attorney
15 BY: JOSEPH TRIPI, ESQ.
16 BRENDAN CULLINANE, ESQ.
17 Assistant United States Attorneys
18 138 Delaware Avenue
19 Buffalo, New York 14202
20
21 EMILY P. TROTT, ESQ.
22 70 Niagara Street, Suite 210
23 Buffalo, New York 14202
24 Appearing on behalf of the Defendant
25 S. Murray, USPO

23 COURT REPORTER: Karen J. Bush, Official Court Reporter
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2 P R O C E E D I N G S

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6 THE CLERK: United States versus Edgar DeKay,
7 15CR142. We're here for a sentencing. Counsel, please state
8 your name and who you represent.

9 MR. CULLINANE: Good afternoon, Brendan Cullinane
10 and Joseph Tripi on behalf of the United States.

11 THE COURT: Mr. Dekay, you can come up to the
12 podium with your attorney.

13 Could you state your name for the record, Ms.
14 Trott?

15 MS. TROTT: Emily Trott here for Mr. Dekay.

16 THE COURT: And are you Edgar Dekay?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And you're represented here today by
19 Ms. Trott?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And the record should reflect that
22 Officer Murray is here from probation.

23 So the matter is on for sentencing. I'm going to
24 state on the record what I received and reviewed in connection
25 with sentencing. I have the Presentence Investigation Report

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2 that was filed at docket 1395. I have the statement of the
3 government with respect to sentencing factors that was filed at
4 1435 on September 24, 2018. I have the defendant's statement
5 with respect to sentencing factors filed at docket 1404 on
6 September 24, 2018. And I have a sealed motion that was filed
7 by the government at docket 1414 on September 27th, 2018. That
8 also has attached to it some e-mail correspondence. I received
9 back in September of 2018 a number of letters from Ms. -- on
10 behalf of Mr. Dekay from Ms. Trott, and I'll identify them on
11 the record. They came by letter dated September 24th, 2018.
12 And they are letters from Mr. Dekay's daughters, letters from
13 Mr. Dekay's wife, two letters from Mr. Dekay's mother, a letter
14 from Mr. Dekay's aunt, a letter from Mr. Dekay's mother-in-law,
15 and a letter from Mr. Dekay's mother and his niece, and a
16 letter from Richard Worth, the programs director at the Niagara
17 County Correctional Facility, two certificates of achievement
18 from Northeast Ohio, and a letter from the unit manager from
19 that facility and letters from friends and part-time employers
20 of Mr. Dekay, three of those letters. And then letters from
21 long-time friends of Mr. Dekay. Four of those letters. And
22 then, in addition, by letter dated February 20th, 2019, Ms.
23 Trott sent a letter on behalf of Mr. Dekay from an Anthony
24 Dloniak, who was a defendant who appeared in front of me and
25 was prosecuted by Mr. Cullinane, who apparently is friends with

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2 Mr. Dekay.

3 And then last night, two e-mails were sent by Ms.
4 Trott that had various attachments. The one was a Notice of
5 Motion to seal with an affidavit in support of that motion and
6 a proposed order and a certificate of service. And then, also,
7 there was another copy of the same e-mail that is attached to
8 the government's sealed motion, this is an e-mail from Mr.
9 Tripi dated September 8th, 2017 to Ms. Duque, copied to Mr.
10 Cullinane. Ms. Trott's response to that e-mail. And then
11 there were some additional e-mails attached to that
12 communication from Ms. Trott last night. There was an e-mail
13 exchange from her to Mr. Tripi from September of 2018. Then
14 there is an e-mail exchange again between Ms. Trott and Mr.
15 Tripi from October of 2018.

16 Then there is a filing from docket 09CR55, that
17 apparently was in front of Judge Arcara. A filing on February
18 7th, 2018 at docket 435 that, apparently, was signed by Mr.
19 Lynch at the U.S. Attorney's Office. There was a Wall Street
20 Journal article attached to the e-mails dated June 20, 2017, at
21 least it was identified as a Wall Street Journal article. I'm
22 not sure the document itself had any identification. And then
23 there was another copy of the e-mail exchange from Mr. Tripi to
24 Ms. Trott, it's attached to the government's sealed motion from
25 December of 2017. And then the response from Mr. Cullinane

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2 dated September 25, 2018, looks like it was from your legal
3 assistant that was just forwarding the sealed motion of Ms.
4 Trott.

5 So that is what I have in connection with
6 sentencing. So, I guess I'll start with you, Mr. Cullinane.
7 First of all, as far as you're concerned, have I missed
8 anything?

9 MR. CULLINANE: No, your Honor.

10 THE COURT: Can you confirm for me that the
11 government received the Presentence Investigation Report?

12 MR. CULLINANE: Yes, your Honor.

13 THE COURT: And does the government have any
14 objections to the Presentence Investigation Report?

15 MR. CULLINANE: No, your Honor.

16 THE COURT: Ms. Trott, first of all, as far as
17 you're concerned, have I missed anything that was submitted in
18 connection with sentencing?

19 MS. TROTT: Judge, I believe I submitted a motion
20 under seal which I've worked really hard on that I believed I
21 had e-mailed everyone last night, including -- or assistants.

22 THE COURT: What time last night?

23 MS. TROTT: Around the same time, it should have
24 been with those other e-mails because they were identified as
25 exhibits, the items that you just designated for exhibits to my

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2 motion.

3 THE COURT: I didn't receive the motion. Did the
4 government receive the motion?

5 MR. CULLINANE: No.

6 MS. TROTT: I thought Mr. Tripi had and I thought
7 I was successful in that because I received an e-mail
8 indicating the government would need to respond to my motion.

9 MR. TRIPI: Could I speak to that, your Honor?
10 This morning I woke up, I saw on my iPhone what was just the
11 title of a motion without being able to read. The night
12 before, Mr. Cullinane and I had a discussion that no motion had
13 ever come. And it was ironic to wake up and see that a motion
14 was filed at 11:41 without reading anything. I sent an e-mail
15 to Ms. Trott saying something to the effect of, "I doubt that
16 sentencing will go forward, I'll need to respond to your
17 spurious motion," which is exactly what I wrote in an e-mail
18 this morning. That was without reading anything and realizing
19 we hadn't received the motion.

20 MS. TROTT: And I apologize for that. I have been
21 working on this motion diligently.

22 THE COURT: No, you haven't, Ms. Trott. No, you
23 haven't. Don't even stand in front of me and suggest that you
24 have been diligent here. As far as I'm concerned, you have
25 blown all of the deadlines that I set. I very clearly on

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2 December 20th, 2018 granted you one more extension of this
3 sentencing date. And I said, "No further extensions will be
4 granted." And I indicated in there that by January 25th, 2019,
5 any motions filed by the defense needed to be filed. We're now
6 here over one month later. So don't tell me that you have been
7 working diligently. You haven't been working diligently. You
8 blew my deadlines. You never even submitted the motion. I'm
9 not accepting a motion at this point. I don't care how hard
10 you claim that you have worked on it. Number one, I don't
11 believe it's true; and number two, you never submitted it.

12 Is there anything else that you believe, other
13 than what I identified that has been submitted in connection
14 with sentencing? If you have some proof that you filed this
15 motion, show it to me. If you have some proof that this motion
16 was sent, show it to me. Clearly wasn't timely, but show it to
17 me.

18 MS. TROTT: It's not on my phone and it appears
19 that I didn't do it correctly.

20 THE COURT: So is there anything else, Ms. Trott,
21 that has been submitted in connection with sentencing?

22 MS. TROTT: No.

23 THE COURT: And can you confirm for me that you
24 received the Presentence Investigation Report?

25 MS. TROTT: I have.

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2 THE COURT: Did you review it with your client?

3 MS. TROTT: Yes, I did.

4 THE COURT: Mr. Dekay, can you confirm for me that
5 you reviewed the Presentence Investigation Report with your
6 attorney?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Are there any objections, Ms. Trott,
9 to the Presentence Investigation Report?

10 MS. TROTT: No, Judge.

11 THE COURT: All right. Is the defense ready to
12 move forward with sentencing?

13 MS. TROTT: The defense would like the opportunity
14 to serve this motion.

15 THE COURT: I am -- well, Mr. Cullinane, what is
16 the government's position on that?

17 MR. CULLINANE: We oppose this motion. As the
18 Court succinctly stated, there has been ample opportunity to
19 file it, and it's been very untimely and the government is
20 ready to proceed with sentencing of Mr. Dekay.

21 THE COURT: I'll deny the request to file this
22 untimely motion. I gave you, the defense, plenty of
23 opportunities to pursue this. And I made it very clear at the
24 last court appearance that we had that I didn't view the motion
25 of having any merit to it. And I think that is self-evident

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2 when we review the transcript of the proceeding that we had
3 prior to Mr. Dekay's plea. And it's self-evident when you
4 review the e-mail communications that you submitted, Ms. Trott,
5 in fact, I think there is probably nothing that is more
6 probative of the lack of merit to this motion than the e-mail
7 where you respond to Mr. Tripi's e-mail from December 8, 2017.
8 So, in any event, it's untimely, and, therefore, I'm denying
9 any request to file an untimely motion, and I'm denying any
10 request for an opportunity to do that.

11 So, does the government move to sentence the
12 defendant?

13 MR. CULLINANE: Yes, your Honor.

14 THE COURT: Is there anything, Mr. Cullinane, that
15 you would like to say before I sentence the defendant?

16 MR. CULLINANE: Yes, your Honor. Thank you very
17 much. Your Honor, this Court is well aware of the conduct of
18 the Kingsmen, as this Court presided over a four-month long
19 trial in the winter and spring of 2018. Even prior to that, in
20 December of 2016, this defendant stood before you and admitted
21 the information contained in the plea agreement. In paragraph
22 five of the plea agreement, describes the use and distribution
23 of controlled substances by his fellow Kingsmen, including the
24 defendant. Paragraph five also includes information about the
25 Kingsmen possessing firearms in furtherance of drug trafficking

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2 and possession of those firearms as Kingsmen and at the
3 Kingsmen clubhouse. Equally significant, your Honor, is the
4 fact that this defendant stood before you and admitted to his
5 conduct on three separate occasions in 2012 and 2013, all of
6 which are violent. Two of which are very violent, they involve
7 drive-by shootings of different individuals because of
8 Kingsmen-related issues. The third issue there that is
9 described and it's a violate crime is the Springville shut
10 down. The Court, again, heard plenty of information about
11 these incidents. The defendant talked about or the plea
12 agreement describes his conduct within the incidents. You
13 heard plenty of testimony throughout the examination and cross
14 examination of witnesses that talked about "Ed" or "Ed Dekay"
15 or "Special Ed" being there on each of these occasions. So
16 there is no doubt that he has committed these crimes, this
17 unlawful conduct, and he is here for sentencing.

18 Furthermore, the Sentencing Guidelines are
19 calculated as such so that a certain Guideline range would be
20 appropriate in this matter. Because of his conduct on these
21 occasions, because of his membership in the Kingsmen and the
22 unlawful conduct they committed, a Guideline sentence is
23 absolutely appropriate. To be clear, the government takes no
24 position within the specific sentence within the Guideline
25 range, but the government advocates for a Guideline sentence to

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2 be imposed for Mr. Dekay's conduct as a result of his
3 involvement and participation in the Kingsmen club. Thank you.

4 THE COURT: Thank you, Mr. Cullinane.

5 Ms. Trott, anything you would like to say on
6 behalf of your client before I sentence him?

7 MS. TROTT: Yes, Judge. I take exception to the
8 Court's ruling, for the record, and I believe my client will
9 have a colorful or colorable claim for ineffective assistance
10 of counsel. And I would urge him to file that as soon as
11 possible.

12 Mr. Dekay admitted his conduct early, which indeed
13 saved the government resources. He admitted his participation
14 in various crimes, which, I guess, was part of his cooperation.
15 However, right after the plea, Mr. Dekay was removed from his
16 normal facility, taken to Cleveland where Mr. Williams was also
17 housed. He was then threatened --

18 THE COURT: Who is Mr. Williams?

19 MS. TROTT: I'm sorry, Willson, Greg Willson was
20 housed and I was contacted on a number of times, since Mr.
21 Willson was his next door cell mate and contacted me several
22 times worried about being labeled a "snitch." I created a
23 motion which indicated the number of times my client has been
24 beaten up, threatened, kicked in the head and subjected to
25 excessive punishment while he has been in prison. And my point

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2 in making the motion was that I believed it was improper for
3 the government to withdraw the plea agreement that we had
4 before. And in giving the Court the case that I provided, I
5 was trying to indicate that there is a rolling standard between
6 what, in contract law, since there was an agreement here, what
7 in contract law is good faith by either party. And I submitted
8 for consideration or did not submit, it appears, for
9 consideration, the fact that my client had a willingness --

10 THE COURT: Mr. Dekay, are you asking me for new
11 counsel?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: All right. We're going to put a halt
14 to this right now. I will contact the CJA panel.

15 Ms. Trott, I'm going to advise you in open court
16 that your continued participation in the CJA panel, I think, is
17 in serious jeopardy.

18 In addition, Mr. Dekay, I will contact the CJA
19 panel and have new counsel assigned. If the government has an
20 objection to this, you can certainly state it on the record.

21 MR. CULLINANE: No objection, your Honor. Thank
22 you.

23 THE COURT: So what we'll do, Mr. Dekay, is once
24 we get new counsel assigned, I will either have you appear in
25 front of me or more likely in front of the magistrate judge,

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2 Judge Roemer, to have counsel assigned. Now, we're going to
3 have to deal with the conflicts. So if you could get to,
4 probably, Judge Roemer's Chambers, an updated conflict list
5 because there obviously has been a number of defendants in this
6 case and there have been a number of defendants who they've
7 already had assigned counsel. So there are a lot of conflicts
8 off of the CJA panel. We'll get that.

9 MR. CULLINANE: We'll send that this afternoon,
10 Judge. Thank you.

11 THE COURT: We are adjourned. Thank you.

12 * * *

13 CERTIFICATE OF REPORTER

14
15 I certify that the foregoing is a correct transcript of the
16 record of proceedings in the above-entitled matter.

17
18 S/ Karen J. Bush, RPR

19 Official Court Reporter
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